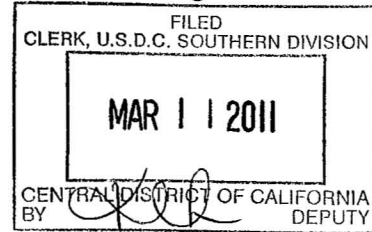


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL <sup>Petitioner</sup>  
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
RECORD IN THIS ACTION ON THIS DATE.

DATED: 3/11/11  
[Signature]  
DEPUTY CLERK



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY J. MACK,  
Petitioner,  
vs.  
L.S. McEWEN,  
Respondent.

Case No. CV 11-1787-GHK (RNB)

ORDER SUMMARILY DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS FOR LACK OF SUBJECT  
MATTER JURISDICTION

Petitioner, a California state prisoner currently incarcerated at Calipatria State Prison in Imperial, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 herein on March 2, 2011.

It appears from the face of the Petition that it is directed to a Los Angeles County Superior Court judgment of conviction sustained by petitioner in 1994. As best the Court can glean from the Petition, petitioner is claiming that the state has violated his federal constitutional right to be provided with a transcript of all proceedings, and thereby prevented petitioner from appealing his conviction and sentence on the basis that the trial court lacked jurisdiction to allow the prosecutor to amend the information in the middle of the trial to add other charges.

It further appears from the face of the Petition that it is directed to the same 1994 Los Angeles County Superior Court judgment of conviction as the prior habeas petition lodged for filing by petitioner in this Court on January 4, 2000 in Case No. CV 00-00045-LGB (RNB) [hereinafter the "Prior Action"]. On May 9, 2000,

1 Judgment was entered in the Prior Action denying the petition and dismissing the  
2 action with prejudice, based on the Magistrate Judge's finding and conclusion that  
3 the petition was time barred. Petitioner filed a Notice of Appeal from that Judgment.  
4 However, his requests for a certificate of appealability were denied in turn by this  
5 Court and the Ninth Circuit.

6 The Petition now pending is governed by the provisions of the Antiterrorism  
7 and Effective Death Penalty Act of 1996 (Pub. L. 104-132, 110 Stat. 1214) ("the  
8 Act"), which became effective April 24, 1996. Section 106 of the Act amended 28  
9 U.S.C. § 2244(b) to read, in pertinent part, as follows:

10 (1) *A claim presented in a second or successive habeas corpus*  
11 *application under section 2254 that was presented in a prior*  
12 *application shall be dismissed.*

13 (2) *A claim presented in a second or successive habeas corpus*  
14 *application under section 2254 that was not presented in a prior*  
15 *application shall be dismissed unless--*

16 (A) *the applicant shows that the claim relies on a new*  
17 *rule of constitutional law, made retroactive to cases on collateral*  
18 *review by the Supreme Court, that was previously unavailable; or*

19 (B)(i) *the factual predicate for the claim could not have*  
20 *been discovered previously through the exercise of due diligence;*  
21 *and*

22 (ii) *the facts underlying the claim, if proven and viewed*  
23 *in light of the evidence as a whole, would be sufficient to*  
24 *establish by clear and convincing evidence that, but for*  
25 *constitutional error, no reasonable factfinder would have found*  
26 *the applicant guilty of the underlying offense.*

27 (3) (A) *Before a second or successive application permitted*  
28 *by this section is filed in the district court, the applicant shall*

1                    *move in the appropriate court of appeals for an order authorizing*  
2                    *the district court to consider the application.*  
3

4                    The Petition now pending constitutes a second and/or successive petition  
5 challenging the same judgment of conviction as the Prior Action, within the meaning  
6 of 28 U.S.C. § 2244(b). See McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009)  
7 (holding that dismissal of a habeas petition as time barred under 28 U.S.C. §  
8 2244(d)(1) constitutes a disposition on the merits and renders a subsequent petition  
9 second or successive for purposes of 28 U.S.C. § 2244(b)). Thus, to the extent that  
10 petitioner is now purporting to raise new claims, it was incumbent on him under §  
11 2244(b)(3)(A) to secure an order from the Ninth Circuit authorizing the District Court  
12 to consider those claims, prior to his filing of the instant Petition in the District Court.  
13 Petitioner's failure to secure such leave prior to his filing of the Petition herein  
14 deprives the Court of subject matter jurisdiction. See Cooper v. Calderon, 274 F.3d  
15 1270, 1274 (9th Cir. 2001), cert. denied, 538 U.S. 984 (2003).

16                    For the foregoing reasons, IT IS ORDERED that this action be summarily  
17 dismissed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the  
18 United States District Courts.

19                    LET JUDGMENT BE ENTERED ACCORDINGLY.

20  
21 DATED: 3/9/11

22  
23  
24                      
GEORGE H. KING  
UNITED STATES DISTRICT JUDGE

25 Presented by: 

26  
27 Robert N. Block  
United States Magistrate Judge  
28